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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF VICTORVILLE,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

RUBEN VARELA,

Real Party in Interest.

E064620

(Super.Ct.No. CIVDS 1503260)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. John M. Pachecho,
Judge. Petition granted.

Graves & King, Harvey W. Wimer III and Dennis J. Mahoney for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

In this matter we have reviewed the petition and invited real party in interest to file opposition; none has been received.

We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

Plaintiff cannot recover damages based on petitioner's alleged failure to capture and remove the dogs that allegedly attacked him unless petitioner's failure constituted the breach of a mandatory duty. (Gov. Code, § 815.6.) Plaintiff identified no such duty. The governing ordinances *authorized* petitioner's employees to capture or remove vicious or dangerous animals, but in language which clearly conferred discretion and did not impose any duty. (See *County of Los Angeles v. Superior Court* (2012) 209 Cal.App.4th 543.)

Accordingly, the trial court erred in overruling petitioner's demurrer and the petition for writ of mandate is granted.

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino County to vacate its order overruling petitioner's demurrer, and to enter a new order sustaining the demurrer. In light of plaintiff's failure to respond in this court, the demurrer shall be sustained without leave to amend.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. Petitioner to recover its costs, if any.

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CODRINGTON
J.

We concur:

KING
Acting P. J.

MILLER
J.